Summary

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, it is unlawful for any provider of consumer financial products or services to engage in unfair, deceptive, or abusive acts or practices (UDAAPs). The Act also provides the Consumer Financial Protection Bureau (CFPB) with the authority to create and enforce rules to prevent UDAAP and to assess potential risks to consumers.

Under the Dodd-Frank Act, an act or practice is unfair when:

- it causes or is likely to cause substantial injury to consumers;
- the injury is not reasonably avoidable by consumers; and
- the injury is not outweighed by any benefits to consumers.

An act or practice is deceptive when:

- the act or practice misleads or is likely to mislead the consumer;
- a “reasonable” consumer would be misled; and
- the misleading act or practice is material.

An abusive act or practice is one that:

- materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- takes unreasonable advantage of:
  - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
  - the inability of the consumer to protect his or her interest in selecting or using a consumer financial product or service; or
  - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Unfair, deceptive, or abusive acts or practices may also violate other state or federal laws. And, certain practices that may be in compliance with other laws can still raise UDAAP concerns. Laws that warrant special attention in managing UDAAP risk include:

- Truth in Lending Act (TILA)
- Truth in Savings Act (TISA)
- Equal Credit Opportunity Act (ECOA)
- Fair Housing Act (FHA)
- Fair Debt Collection Practices (FDCPA)
- Fair Credit Reporting Act (FCRA)

While the CFPB has not issued specific rules concerning UDAAP, the CFPB’s exam procedures, as
well its enforcement actions, provide helpful insight into what examiners will be looking for during examinations.

UDAAPs can occur at any stage in the credit lifecycle—Sales and Marketing, Underwriting and Account Origination, Account Management and Loan Servicing, and Collections. Institutions should perform a complete and thorough compliance self-assessment of all their consumer products and services specifically for UDAAPs, and especially for “abusive” elements.

A knowledge of the target audience for a product or service is incredibly valuable in preventing UDAAPs. Institutions should consider a target audience’s level of education, financial sophistication, risk appetite, vulnerabilities, and financial position, among other factors.

Consumer complaints also play a critical role in the detection of unfair, deceptive, or abusive acts or practices. Institutions should have an effective complaint management system to log and analyze complaints to avoid UDAAP violations.